

Nuclear Regulatory Commission

§ 2.335

commencement of discovery against the NRC staff (as otherwise permitted by the provisions of this part) before the publication of the pertinent document will not adversely affect completion of the document and will expedite the hearing.

§ 2.333 Authority of the presiding officer to regulate procedure in a hearing.

To prevent unnecessary delays or an unnecessarily large record, the presiding officer:

- (a) May limit the number of witnesses whose testimony may be cumulative;
- (b) May strike argumentative, repetitious, cumulative, unreliable, immaterial, or irrelevant evidence;
- (c) Shall require each party or participant who requests permission to conduct cross-examination to file a cross-examination plan for each witness or panel of witnesses the party or participant proposes to cross-examine;
- (d) Must ensure that each party or participant permitted to conduct cross-examination conducts its cross-examination in conformance with the party's or participant's cross-examination plan filed with the presiding officer;
- (e) May take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination; and
- (f) May impose such time limitations on arguments as the presiding officer determines appropriate, having regard for the volume of the evidence and the importance and complexity of the issues involved.

§ 2.334 Schedules for proceedings.

- (a) Unless the Commission directs otherwise in a particular proceeding, the presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall, based on information and projections provided by the parties and the NRC staff, establish and take appropriate action to maintain a schedule for the completion of the evidentiary record and, as appropriate, the issuance of its initial decision.
- (b) The presiding officer or the Atomic Safety and Licensing Board assigned to the proceeding shall provide written

notification to the Commission any time during the course of the proceeding when it appears that the completion of the record or the issuance of the initial decision will be delayed more than sixty (60) days beyond the time specified in the schedule established under § 2.334(a). The notification must include an explanation of the reasons for the projected delay and a description of the actions, if any, that the presiding officer or the Board proposes to take to avoid or mitigate the delay.

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

- (a) Except as provided in paragraphs (b), (c), and (d) of this section, no rule or regulation of the Commission, or any provision thereof, concerning the licensing of production and utilization facilities, source material, special nuclear material, or byproduct material, is subject to attack by way of discovery, proof, argument, or other means in any adjudicatory proceeding subject to this part.
- (b) A party to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other party may file a response by counter affidavit or otherwise.

(c) If, on the basis of the petition, affidavit and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning party has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross-examination or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

(d) If, on the basis of the petition, affidavit and any response provided for in paragraph (b) of this section, the presiding officer determines that the *prima facie* showing required by paragraph (b) of this section has been made, the presiding officer shall, before ruling on the petition, certify the matter directly to the Commission (the matter will be certified to the Commission notwithstanding other provisions on certification in this part) for a determination in the matter of whether the application of the Commission rule or regulation or provision thereof to a particular aspect or aspects of the subject matter of the proceeding, in the context of this section, should be waived or an exception made. The Commission may, among other things, on the basis of the petition, affidavits, and any response, determine whether the application of the specified rule or regulation (or provision thereof) should be waived or an exception be made. The Commission may direct further proceedings as it considers appropriate to aid its determination.

(e) Whether or not the procedure in paragraph (b) of this section is available, a party to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

§ 2.336 General discovery.

(a) Except for proceedings conducted under subparts G and J of this part or as otherwise ordered by the Commission, the presiding officer or the Atomic

Safety and Licensing Board assigned to the proceeding, all parties, other than the NRC staff, to any proceeding subject to this part shall, within thirty (30) days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and provide:

(1) The name and, if known, the address and telephone number of any person, including any expert, upon whose opinion the party bases its claims and contentions and may rely upon as a witness, and a copy of the analysis or other authority upon which that person bases his or her opinion;

(2)(i) A copy, or a description by category and location, of all documents and data compilations in the possession, custody, or control of the party that are relevant to the contentions, provided that if only a description is provided of a document or data compilation, a party shall have the right to request copies of that document and/or data compilation, and

(ii) A copy (for which there is no claim of privilege or protected status), or a description by category and location, of all tangible things (e.g., books, publications and treatises) in the possession, custody or control of the party that are relevant to the contention.

(iii) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, <http://www.nrc.gov>, and/or the NRC Public Document Room, a sufficient disclosure would be the location, the title and a page reference to the relevant document, data compilation, or tangible thing.

(3) A list of documents otherwise required to be disclosed for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(b) Except for proceedings conducted under subpart J of this part or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff shall, within thirty (30) days of the issuance of the order granting a request for hearing or